ARBITRATION AWARD

STATE OF WISCONSIN

In the Matter of the Arbitration between :

MADISON TEACHERS INCORPORATED :

and :

MADISON METROPOLITAN SCHOOL DISTRICT :

Re: Case LXXVIII
No. 22903
MED/ARB-87
Decision No. 16383-A

APPEARANCES

John A. Matthews, Executive Director, and Nicholas A. Linden, Assistant Executive Director, Madison Teachers Incorporated, 121 South Hancock Street, Madison, Wisconsin 53703, on behalf of Madison Teachers Incorporated, hereinafter called the Union.

John T. Coughlin, of Mulcahy & Wherry, S.C., Attorneys at Law, 110 East Main Street, Madison, Wisconsin 53703, and Maurice E. Sullivan, Director of Employee Services Division, 545 West Dayton Street, Madison, Wisconsin 53703, on behalf of Madison Metropolitan School District, hereinafter called the Board.

The parties in this matter have had a collective bargaining agreement which, by its terms, expired on December 31, 1977. Bargaining on a renewal of the agreement began in November, 1977 and had continued until April, 1978. On April 14, 1978 the Association filed a petition with the Wisconsin Employment Relations Commission alleging that an impasse existed in the collective bargaining between the parties and requesting mediation/arbitration pursuant to the terms of Section 111.70 (4)(cm)6 of the Municipal Employment Relations Act. Following mediation efforts by a member of its staff the WERC certified that conditions precedent to initiation of mediation/arbitration had been met and initiated the mediation/arbitration process. On June 8, 1978 the undersigned was notified that he had been appointed as mediator/arbitrator.

Subsequently a mediation session was held on July 14. No progress was made by the mediator in settling the dispute at that session, partly because of the unavoidable absence of one of the Board's officials. Thereupon a date was set for an arbitration hearing. The hearing was held on August 17. The parties presented the evidence of witnesses in person and in the form of documents. A transcript was taken by a court reporter. At the conclusion of the hearing the parties agreed to exchange briefs through the arbitrator on or before September 18. This date was later extended by mutual agreement to September 22. Reply briefs dated respectively October 5 and October 6 were then exchanged through the arbitrator on October 9.

THE ISSUES

The parties exchanged final offers dated May 5, 1978. Although mediation efforts were unsuccessful on July 14, the parties met on the day before the arbitration hearing and agreed to several items. At the hearing on August 17 the parties stipulated

that by mutual consent the final offers had been modified.

The final offers dated May 5, 1978 are presented here as addenda. The final offer of the Union is attached to this report as Addendum A and the final offer of the Board is attached marked Addendum B. The stipulated changes and the unchanged portions of the final offer are as follows:

1. All provisions of the Union's proposal designated at the top of the page as "A. CONFERENCE AND NEGOTIATION" have been agreed to except paragraph 2.a. The issue here relates to the duration of the agreement. The Employer would retain the wording in the old agreement which includes these words: ". . .commencing January 1 and ending December 31. . ." where the Union proposes the words: ". . .October 16, 1979. . ."
2. As to the issue on the page marked "A. SALARY" the parties are in dispute on the provisions of Paragraph 1, as indicated, but have agreed on the provisions of Paragraphs 2 and 3.
3. On the issue headed "D. POSTING OF VACANCIES" the parties have agreed on Paragraph 1 but are in disagreement on Paragraphs 2, 3, and 4.
4. As to the page headed "E. ASSIGNMENT/INVOLUNTARY TRANSFER," the parties have agreed on Paragraphs 1 and on new and different wording for Paragraph 3. They have also agreed on the title, and this proposal is no longer an issue in this proceeding.
5. The issue of voluntary transfer of assignment remains as stated on the page of the Union's final offer marked "VOLUNTARY TRANSFER OF ASSIGNMENT."
6. The issue of reduction in work hours remains in dispute and the Union's final offer on the two pages headed "I. REDUCTION IN WORK HOURS" remains unchanged.
7. On the issue of re-employment the parties have agreed on the wording in Paragraphs 2, 3, and 4 on the page of the Union's final proposal headed "N. RE-EMPLOYMENT," but they are still in disagreement on the Union's proposal in Paragraph 1 except that the Board agrees to deletion of the words lined out in the third line from the bottom of the paragraph.
8. The issues of holidays and health insurance have been settled.
9. Duration remains an issue.
10. The Board and Union offers are modified by the deletion of final offers on the subjects of health insurance and holidays. Other issues remain as stated in the addenda.

POSITION OF THE PARTIES ON THE ISSUES

Wages

In the words of the certification, as quoted in the labor agreement, the members of this collective bargaining unit are:

> ...all regular full-time and regular part-time school aides employed by the Madison Board of Education. . .directly or indirectly assisting professional staff in the instructional program including teacher aides, resource center aides, library aides, handicapped children's aides, and counsellor aides, but excluding lunchroom and playground supervisors, and all other employees.

The parties are in agreement on keeping the rates for Steps 3 through 7 as they were in the old agreement. The Union, however,

would increase Step 1 from $2.80 to $3.10 per hour and the Board would increase Step 1 to $3.20 per hour. Both parties agree on increasing Step 2 from $3.10 to $3.35 per hour. The Union would add a 5 per cent differential for "aides employed in special education programs." The Board opposes the addition of the 5 per cent differential.

The Union presented evidence at the hearing purporting to show that in the spring of 1978 there were 261 school aides on the payroll of whom 56 were engaged in special education programs. Such aides are required by regulation of the Department of Public Instruction to obtain a $20 license covering a three year period. To qualify for the license (as quoted from DPI regulations) the person must be "at least 18 years of age and (have) had 3 years of college education, or a combination of the above preparation and/or experience totaling 3 years, or (have) completed a planned two-year program in child care and development approved by the department of public instruction." (A Board exhibit at the hearing, however stated that applicants for handicapped children's aide licenses must be at least 20 years of age.)

The Union contends that the special requirements of the job of a Special Education Service (SES) aide warrant the 5 per cent differential. The parties' first agreement was effective on January 1, 1975. Prior to that time there were periods when certain aides were paid a $.25 per hour differential. The Union introduced copies of "Information Sheets" for teacher aides dated October 1, 1969 and June, 1971 wherein "handicapped children's aides" were listed as being paid such a differential. According to the Union, that policy was discontimued in 1972. The Union also argues that there is a sort of precedent for the differential in an agreement it signed with the Board on July 21, 1978 that provided for "therapy assistants or interpreters" to be placed at Step 5 at the time they commenced work and to advance in accordance with the terms of the agreement thereafter.

The Union presented a witness at the hearing who had served as a special education aide for about five years. She described some of the work that she has performed with emotionally disturbed children. This included some work that was onerous, distasteful, and sometimes even dangerous in assisting teachers working with children from age three to some who were young adults at age 21. Some of the duties merely required patience while some others dealt with untidy and unpleasant feeding and excretory behavior of some of the children. The testimony purported to indicate that the kind of work performed by SES aides was quite different from that performed by regular school aides.

On this issue the Union does not provide nor depend upon comparability data. The Union argues that the differential proposed is justified by (a) the necessity that SES aides have sufficient additional skill and training to obtain a special license. Testimony at the hearing indicated that (b) SES aides have special responsibilities, that (c) they encounter various undesirable and hazardous conditions in their work, and that (d) there are historical precedents (as described above) for such a differential.

In support of its own proposal the Board introduced rates for teacher aides in nineteen other school districts in the State of Wisconsin, fourteen of which were organized for collective bargaining. These rates were all lower at the top of their scales, although five had higher beginning rates than the rate proposed by the Board (Eau Claire, Tomah, Milwaukee, Kenosha, and Green Bay). The Board also introduced rates for the seven school districts contiguous to the Madison Metropolitan School District. All had lower top rates and only one (Monona) had a higher starting rate than the rate proposed by the Board. The Board also introduced data that had been gathered in a National Survey of Public Schools on teacher aides by Educational Research Services, Inc. for the year 1977-78. The top rate in Madison was higher in every category (i.e., nationally by enrollment groups of over 25,000, nationally by comparable per pupil expenditure, and in the Great Lakes geographic area), although the beginning rate in each category was

on the average from $.20 to $.46 higher than Madison's beginning rate in 1977-78.

In basing its argument on comparability data on this issue the Board points out that the average maximum rate paid in the other nineteen districts in the State of Wisconsin was $3.71 per hour, $1.29 less than the Board's offer at the maximum. The average maximum in the seven contiguous districts for 1977-78 was $3.78, which is $1.22 less than the Board's proposed maximum. The Board finds that nationally its offer at the maximum exceeds the mean of high figures for instructional and non-instructional aides in comparable enrollment groups by $.49 and $.60 respectively, in comparable per pupil expenditure groups by $.79 and $1.22 respectively, and in the Great Lakes geographical area by $1.12 and $1.37 respectively.

The Board disputes all the reasons given by the Union to support the differential. Teachers and substitute teachers are also required to maintain certification from the DPI to perform in SES programs, yet they receive no salary differentials. The Board argues also that the skills and experience required for licensure of SES aides is minimal and that as a practical matter these skills are acquired on the job by working under the direction of teachers, that it was not established that the SES function requires any more skill than other aides need to have. The Board disputes the precedent value of the special agreement regarding the rate for therapy assistants and interpreters for the deaf, arguing that these individuals are merely hired at an advanced step on the salary schedule. The Board argues that SES aides have no greater responsibility than other school aides. As to the undesirable conditions, the Board argues that this is offset by small class size and "one-to-one: and "two-to-one" ratios of children to aides. The Board points out that the historical record of differentials preceded collective bargaining and that the differentials were abolished in the first agreement. The Board fears that reintroduction of a differential for SES aides would lead to demands from other categories of aides, such as resource center and library aides.

The Board asserts that the words "employed in," as proposed by the Union in the sentence calling for the 5 per cent differential, are uncertain in meaning. Some of the aides who are associated with SES programs, such as those who type SES educational material or supervise SES children on the playground along with other children may also consider themselves eligible for the differential although they are unlicensed. In addition, the Board argues that SES aides perform different kinds of work during the day and that detailed record keeping would be required in anticipation of disputes and grievances over which work of the aides qualified for the differential. And finally, the Board argues that in its pre-hearing brief the Union rounded off the 5 per cent differential rather than carrying the calculations out to four places. If the calculations used by the Union to illustrate the application of the differential were used, this might well lead to additional litigation about how the calculations are to be made. Thus, the Board argues that the Union's final offer does not lead to a complete and final determination of the unresolved issues.

Although the Board does not interpose any claim of inability to pay, its cost estimates of the projected comparative costs of its own and the Union's salary cost increases on an annual basis differs by .9 per cent, with the Board's estimate of its own proposal coming to 7.27 per cent and the Union's to 8.17 per cent. Taking into account roll-up cost and the different proposals on long term disability insurance, the Board offer (according to its own estimate) on an annual basis totals 9.044 per cent while the Union's offer totals 9.659 per cent.

Long Term Disability Insurance

The Board offers this benefit so as to extend to the school aides the long term disability insurance benefit that applies to employees represented by unions in other units. The Union does not deny the value of this offer but states that its own other proposals have a higher priority in this dispute.

Posting of Vacancies

In the past the agreement has provided for posting of vacancies on a monthly basis in each school office, although employees have been able to examine an updated list of vacancies in the Office of Employee Services at the Board's office. The current practice, according to the Union, is to post such vacancies in the staff lounge of each school on a monthly basis. The parties have now agreed to change the period from monthly to weekly.

The Union proposes that the notices be posted for five days prior to the date requests for transfer are due. During the summer the Board would be required to send vacancy notices to aides who had indicated a desire to transfer for the ensuing school year, except where the surplus pool already included any aide qualified for the vacancy. If the Board did not intend to fill the vacancy, it would be a requirement that the Union be so notified.

In the view of the Union the current practice of posting notices only once a month has resulted in having the vacancies filled in many instances before the aides have knowledge of them and are able to make applications for voluntary transfers. The proposal to send the notices of vacancies to aides during the summer period would follow a pattern in the teachers' agreement with the Board. The Union argues that without such a provision, aides have no opportunity to make voluntary transfers after school has closed in the spring. The general effect, according to the Union, would be to make the procedure more effective and fairer for the aides in the unit. The Union argues that the process would not be onerous or expensive for the Board and would in fact follow the general pattern set in other units of food service, clerical, and custodial employees as well as the teachers.

The Board sees this proposal as unnecessary. An exhibit was introduced to show that of 105 vacancies during the 1977-78 school year only 8 were filled by transfers, with 67 being filled by new hires, 20 by aides in the surplus pool, and 10 by increasing the hours of regular aides. Of the 21 vacancies posted during the year only 3 were filled by transfers, the other 18 by new hires. To the Board this evidence indicates that the current aides have little interest in this method of filling vacancies. The Board also questions the use of the term "week days" in Paragraph 2 of the proposal and "days" in Paragraph 3 and suggests that this ambiguity could result in grievances over whether or not the Board fulfilled its obligation under this provision. The Board also objects to the proposed requirement that all vacancies be held open for five days except when there is a qualified person in the surplus pool. In some cases, it is argued, this would cause unnecessary delays in filling vacancies, especially in the area of special education programs.

The Board also argues that the Union has taken liberties with its comparisons of this proposal with the posting provisions in other agreements that the Board has with other unions. The Board argues that the other provisions are not as restrictive as what is proposed here. Nor do the other agreements, other than the case of the teachers, require mailing of notices during the summer when vacancies occur. For those reasons the Board would merely change the frequency of the posting from a monthly to a weekly basis and not make the other changes proposed by the Union.

Voluntary Transfer of Assignment

The main burden of this proposal by the Union is to delete two paragraphs in Article IV F. of the agreement that apply to posting of vacancies, which the Union would have governed by the proposals on posting of vacancies discussed above. Further, wording in the Paragraph designated as Article IV F.4. would be changed in the final offer so as to refer to new proposed wording on the subject of reduction in hours, which the Union proposes to add in Article IV I. 3. (A typographical error in the Union's final offer on this issue mistakenly refers to Section IV-1(2) instead of IV-1(3).)

The Board believes that this change is unnecessary for the reason that the Union has not shown that any aide's employment has been jeopardized by the procedures in the old contract. Secondly, the Board argues that the wording is ambiguous. Thirdly, the Board argues that the Union is fallaciously implying that the proposed language is equivalent to language in the teachers' contract, which the Board says it is not.

In general it is necessary to discuss this matter under the heading of Reduction in Hours.

Reduction in Work Hours

The Union states that its intention is to establish reasons for reduction in hours, namely a substantial decline in student enrollment or a substantial change in the school program; to allow aides to volunteer for a reduction in hours or for surplus status; to establish seniority and employment status as the criteria by which aides are selected for reduction in hours or declaration of surplus; absent volunteers, to establish deadline dates for the reduction of hours for the ensuing semester; and to create a method of reassignment based on preference and seniority after hours have been reduced or surplus declared. The Union argues that the language in the old agreement is defective for the following reasons (quoted from the Union's brief, page 48):

1. Reduction in hours or declaration of surplus at a given school need not be tied to any particular reason.
2. Because there is no provision to voluntarily reduce one's hours or be declared surplus, it is entirely possible that aides who wish to be reassigned to another school, or reduce their hours in order to stay at a given school, will not be permitted to do so. Whereas, the current procedure may result in some other aide having to be declared surplus or having his/her hours reduced.
3. A full-time aide with several years of seniority may have his/her hours reduced or be declared surplus at a school while less senior, full-time and part-time aides have their hours and assignments maintained at the same school.
4. Surplus or reduction in work hours may occur at any time under the current language.
5. Once an aide has his/her hours reduced or is declared surplus there is no procedure whatsoever for having hours restored when they become available, or a procedure by which surplus aides are re-assigned to other vacancies. Preference or seniority are not considered.

The Union believes that its proposal would remedy the defects it sees in the old agreement. Mechanically it would be expected to work in a manner very similar to the provision for reduction in staff in the teachers' contract with the Board. The concept of a surplus pool is a familiar one to the parties and the mechanics of this procedure have been tested in the teachers' unit where they have been successful.

The Union supported its position by introducing records of declaration of surplus school aides that occurred at the end of the 1975-76 school year. These records purported to show that in some schools full-time school aides were declared surplus while part-time aides in the same school were unaffected and that in some schools school aides with higher seniority were declared surplus while aides with lower seniority were unaffected. The Union also introduced the decision of an arbitrator on the issue which indicated that the Board had failed to abide by the seniority provisions of the agreement in reassigning two school aides for the 1975-76 school year.

In its presentation the Board introduced a series of hypothetical examples of reduction in hours exercises and posed solutions that would be worked out under the alternative provisions of the old contract and of the language in the final offer of the Union. This presentation emphasized what the Board considered to be likely anomalies in the application of the Union language, including (a) the necessity in some instances of declaring a full-time aide surplus because of the restriction on reducing such a person to part-time status and where the result would be the necessity of then adding a part-time person out of the surplus pool; (b) eliminating part-time aides with needed skills (typing was the example used) while eliminating the flexibility allowed under the old agreement whereby the principal of the school has been able to make assignments of "remaining staff at the time their service is needed"; and (c) unusual results involving part-time assignments in different schools because of undesirable and difficult travel arrangements.

Besides emphasizing such specific undesirable results from the Union's proposal the Board argues that it is vague and ambiguous and therefore not dispositive of the issue. In support of this argument the Board makes the following points:

1. The Board contends that the terms "substantial decline in student enrollment or substantial change in the school program" (emphasis supplied) would breed litigation at the time the Board was required to apply the process. The Board introduced a copy of an arbitration award involving the teachers' unit where MTI had questioned a Board layoff based on similar terminology in that agreement. Although the Union suggested that the award would be dispositive of the issue, the Board maintains that since it was in a different unit, it would not provide a precedent in this one. Furthermore, the Board argues that the Union has not offered any credible evidence that there has been an arbitrary action by the Employer involving reduction of aide hours. The Board disputes the use by the Union of the reduction in aide hours following the 1975-76 school year, since the data do not reflect actual hours and assignments for the 1976-77 school year, information which was available to the Union for this proceeding if they had chosen to use it. The Board also argues that the reasons set forth are too restrictive and do not take into account other valid reasons for reducing hours such as the needs of students, financial support available for Board programs, and shifting student populations which may require varying levels of aide services.
2. The Board objects to the lack of flexibility in the proposed requirement that aides be notified by July 1 or December 1 of surplus status. The requirement of the old agreement is that "continuing aides shall receive notice of the probable number of hours of their assignment and location prior to the close of the preceding school year." This notice has been given on or about

May 1 and the Board is unaware of any problems encountered under that procedure. The Board believes that the July 1 and December 1 notification dates ignore such problems as not knowing about shifts in enrollments until school begins in the fall, catastrophies such as fires, and the fact that full-time aides are already guaranteed a work-week of more than 19 hours under the old wording.
3. The Union's proposal would not allow exercise of judgment in reduction of hours based on the extent of skills of the aides affected and the needs of the teaching program and the students. (The Board supported this position by the hypothetical examples described above.)
4. The Board is opposed to the proposition that aides should be allowed to voluntarily reduce hours in order to remain at a given school or to volunteer for surplus in order to effect a transfer to another school. It would prefer to grant permission for reductions to part-time status on an ad hoc basis, since it does not view this process as necessarily advantageous to the Board's interest.
5. The Board envisions several anamolies and uncertainties involving the administration of the wording in Article IV I. 3. of the Union proposal. These were covered specifically in the Board's hypothetical examples discussed above.

Since this appears to be the key issue and the most difficult for the arbitrator to decide, perhaps it would be best to list the rebuttal arguments offered by the Union on these points here.

The general rebuttal argument is that the proposals for school aides contained in the Union's final offer are patterned after requirements that are already extant in the teachers' agreement with the Board. The Union believes that the interpretation already given the term "substantial" as applied to decline in student enrollment will serve as precedent for this purpose. The same argument is applied to the reasons for reducing hours since the Union points out that these are the reasons given in the teachers' agreement with the Board for assignment of teachers to the surplus pool. The Board's objections to the deadline dates are treated in the same manner, since the dates proposed are those that exist in the current teachers' agreement. In addition, the Union asserts that the self-imposed date of May 1, as used by the Board, is more demanding than the dates proposed by the Union. The Union dismissed the hypothetical examples that the Board asserts would produce anomalous situations with the characterization that they were "fictional" and designed to emphasize conflict and confusion about the Union's proposal.

The Union makes the following specific responses to the problems with Article IV I.3. as posed by the Board:
1. If after the application of the seniority criterion in the reduction of hours the remaining aides cannot be reassigned in order to adequately staff the school's program, then the involuntary transfer clause of the proposed agreement can be invoked. If all other methods fail to achieve the desired results, the Board can implement the "reduction in staff" provision of the agreement.
2. Assignments from the surplus pool, under the proposal, are made not only by seniority. The language states that "aides shall then be reassigned pursuant to their preference among vacant positions for which they are qualified and/or certificated."
3. In response to the Board's assertion that the Union's proposal would result in vacancies that are unnecessary because of the operation of the requirement that no full-time aide can be reduced to part-time, the Union asserts that where necessary the aide declared surplus may have to work in two different schools in order to avoid going below the 19 hour limitation.
4. The Union agrees that under certain circumstances it would be possible for a full-time aide to be competing with a part-time aide for the same position and that if the part-time aide had greater seniority, that person would get the assignment. This

could happen in a situation where a full-time aide is working in more than one school. In that situation if there was not work enough for the full-time aides in the surplus pool, then the Board might have to effectuate a reduction in staff.

5. On the issue of split assignments in two different schools where the travel arrangements make such assignments unacceptable, the Union argues that after making reasonable efforts to work this out and where the travel arrangements make the assignments unacceptable to the aides involved, the Board is free to hire new aides.

6. One of the anomalies the Board sees in operation of the Union's proposal involves allocation of additional hours and administration of the sentences in Article IV - Factors Relating to Employment, I. 3., which says in its last two sentences:

> Additional allocation or restored allocation in aide hours shall be first offered to aides then currently employed at the school/work location where such allocation becomes available. Additional hours will be offered to school aides on the basis of seniority as defined in Section IV-G, before additional aides are hired to perform the available work.

The Board poses some hypothetical examples showing additional hours being assigned in situations where time conflicts would make it difficult or impossible for the most senior aides to accept the new assignments. The Union's response was that the principal should offer the hours to the most senior aide who would have the choice of accepting and at the same time relinquishing the hours that produced the conflict or turning down the offer, in which case the principal would make the offer to the next most senior aide, who could make the same choices. The Union affirms that if in this circumstance a part-time aide has the greatest seniority, the principal would be obligated to make the offer to the part-time aide before offering the additional hours to the most senior full-time aides. If then there are no takers, the principal would be free to post the hours as a vacancy and if there were no takers under that procedure, to employ a new aide.

Another basic disagreement between the parties that is implied in all this contention is that the Union believes that most aides are substitutes for one another while the Board asserts that this is true only in a limited sense and that in many cases judgment must be applied by the principal of the school. This disagreement introduces the following issue.

Re-Employment

The Union states that in the old agreement the parties had included a provision to appoint a joint committee to "develop description(s) of the school aide position(s)." Although the committee had met several times, the Union asserts that there was agreement on the proposition that no such job descriptions should be written. The Union believes that it follows from that experience and is consistent with the views of the parties that the phrase "for their classes of positions" should be deleted from the first sentence of Article IV - Factors Relating to Employment - N 1. so that the sentence would then read: "Employees on layoff shall be placed on re-employment lists."

The Board agrees that the joint committee had come to the conclusion described by the Union, but it believes that the proposal of the Union for a five per cent differential for SES aides is inconsistent with this proposed deletion.

Grievance Form

The proposal of the Board to add a grievance form to the agreement between the parties is both simple and complex. Since the moving party here is the Board, its position will be discussed first.

In its final offer the Board states simply: "The attached grievance form shall be used to process grievances." The form attached is patterned after a form used by the Wisconsin Council of County and Municipal Employees, Council #40, and which appears in the Board's current agreements with Local #60 of that organization and covering food service and building maintenance employees.

The Board's general position on this issue is that most grievances in this unit are being filed as class or organizational grievances at the third step pursuant to the following paragraph of the agreement, II - Procedure - B 3. Level 3:d.:

> Grievances initiated by Madison Teachers on behalf of bargaining unit members as a class or as an organizational grievance are commenced at this level of the Grievance Procedure. Grievances initiated by Madison Teachers Incorporated as class grievances or an organizational grievance must be submitted to the Superintendent or his designee within sixty (60) days after Madison Teachers knew of the act or condition on which the grievance is based, or the grievance will be deemed waived. If the act or condition reoccurs, the time limits will be renewed.

The Board introduced a copy of a grievance that had been filed by the Executive Director of the Union as an organizational grievance. Although it involved two named employees, the issue was how the Board accumulated sick leave (an issue irrelevant to the Board's argument here). The Board asserted that one of the grievants had not known that the grievance had been filed and had complained about it both to the Director of the Employee Services Division and had "pressured the Board of Education. . ." The employee did not appear as a witness at the hearing.

By introducing the form to the agreement the Board argues that settlements at the lowest possible level would be encouraged. If both the grievant and the immediate supervisor are unaware of the grievance, then little accomodation can occur on the working level. The Board argues that precedent for the form exists in two of its other labor agreements with AFSCME as well as in the Union's agreement in the current negotiations to include an evaluation form used with teaching aides in the agreement.

The Union opposes the use of the form on grounds that it is unnecessary and that it would prevent the Union from properly carrying out its responsibility to represent employees in the unit. The Union introduced several internal documents to support its argument that the use of the proposed form and its inclusion in the agreement are unnecessary. The first such document was a detailed counterproposal made by the Union last May in response to a similar proposal by the Board in negotiations involving the clerical and technical employees unit. In that case the Board had later withdrawn its proposal as part of a settlement package. The Union also introduced copies of its grievance form letters to the Board as well as a form letter that is purported to go to the grievant on whose behalf an organizational grievance has been filed. Another form letter was introduced purporting to show that when the grievance is forwarded to the Board, copies of the grievance and the correspondence are also sent to the Members of the Board of Education, the Superintendent, the grievant, and the president of the unit. The Union also introduced a copy of

its grievance settlement authorization form wherein the grievant is asked to sign a form appointing and authorizing the Union to act for him/her and to dispose of the matter in a manner that the Union deems proper. The Union therefore denies that grievances are processed without the knowledge of individuals named as grievants.

The second principal argument of the Union is based on its belief that the existence of the form in the agreement may inhibit or even prevent the Union from filing organizational grievances that may be contrary to the wishes of a particular member of the unit but which are necessary for the Union to properly protect the interests of the other members of the unit. This, the Union argues, is because the form requires the signature of the grievant. In this connection the Union cites the Plum City WERC case (West Central Education Association vs. Joint School District No. 3, Plum City, Wisconsin, et al., Case I, No. 21797, MP-761, Decision No. 15626-A) wherein Thomas L. Yaeger, WERC Examiner, in a prohibited practice case, found that a teachers union had no authority to file a grievance on behalf of two employees who declined to file grievances. In that case the agreement between the parties contained the following two sentences: ". . .Grievances shall be limited to this working agreement and as required by statute. Also, the association cannot represent an individual unless the individual initiates the grievance in writing." It is the Union's fear that if the Board's proposed grievance form, with a place at the bottom for signature of "aggrieved worker" is included in the agreement resulting from this proceeding, then the Union may not be able to pursue a grievance if an employee refuses to sign the grievance form. Thus the Union might be prevented from performing its obligation "to fairly represent each member of the collective bargaining unit."

The Union points out that the employee who was alleged by the Board to have complained about not knowing about a grievance filed by the Union in her behalf had not appeared to testify. In addition, the Union argues, that employee could have filed a complaint with the Union, something she is said not to have done. The Union also asserts that the proposal is unworkable for the reason that if one employee refuses to sign a grievance while another one does sign the form and the grievance is settled in favor of the grievant, then presumably the settlement or the award would apply only to the one who had signed, which might lead to two different methods of applying the provisions of the agreement by the Board.

In rebuttal the Board states that the record should be clear in showing that the intent of the Board is not to prevent the Union from filing organizational grievances that are appropriate at level three and that in that case ". . . the grievance procedure shall be considered as properly constituted <u>if the president of USA-MTI signs the grievance forms and files them with the appropriate district official</u>." (Emphasis supplied by the Board in its brief.) The Board also argues that the Plum City case is distinguishable from this one in that the decision there was footed in the exact language of the agreement, whereas there is no language in this agreement that would prevent the Union from continuing to file organizational grievances at Level 3.

Duration

The Union's proposal on this issue is to extend the old agreement to May 4, 1978 and to make the provisions of the new agreement effective on May 5, to remain in effect until October 15, 1979. The Board would make the new agreement effective when the old agreement expired from January 1, to December 31, 1978.

The Union argues that the Board's proposal is impracticable since it would cause to remain in effect a provision in Article II-

Procedure - A b. Timetable, which calls for presentation of initial proposals on July 1 of the year before the new agreement is to take effect. The Union argues that this is contrary to the letter agreement of the parties for these negotiations, which resulted in commencement of negotiations only 60 days before expiration instead of six months. The Union believes that :
a. Making the effective date May 5, 1978 would not only result in savings because of extension of the terms of the old agreement for a period of more than four months, but it would also b. allow the parties to benefit from experience under the new agreement if it were extended to October 15, 1979. Without that extension, and if the Board's proposal is adopted in this proceeding, the parties would need to commence negotiations for a new agreement immediately after this award issues. In response to the Board's assertion that the Union's proposed termination date would result in termination of agreements in all three teaching units on the same date, the Union argued that there had been no settlement in either the teachers' or the substitutes' units on termination dates and that since they might terminate later than October 15, 1979, the Board's position is speculative. In addition, the Union argues that the District does not give an explanation of why simultaneously expiring agreements in the three units would be undesirable, that in any case a strike of all three units would be unlikely in view of the mediation/arbitration procedures that would be applicable under Chapter 111.70.

The Board gives two reasons for proposing a one year agreement expiring on December 31, 1978. First, the complexity of the Union's proposals make it desirable to continue to discuss concrete problems relating to surplus assignment, reduction of hours, job vacancy posting, and so on. This is preferable to having the Union's proposals adopted and being required to administer the contract for a period of about a year under such inflexible language. Second, the Board argues that simultaneous expiration of three student services contracts (teachers, substitutes, and teacher aides) on the same date, October 15, 1979, is undesirable for the reason that it would place additional pressure on the Board and MTI negotiators as they would need to "package acceptable contract agreements with the three bargaining units," and possibly seek to utilize the mediation/arbitration procedures at the same time for these units. Such an outcome might have adverse effects on the expeditious resolution of differences as well as on employee morale during the pendency of dispute procedures.

OPINION

The statute lists several factors for the arbitrator to consider. Since I will be referring to them in the material that follows, they are reproduced for ready reference below:

> 7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:
> a. The lawful authority of the municipal employer.
> b. Stipulations of the parties.
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
> d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.
f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
h. Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions or employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The issues will be treated here in the same order as above.

Wages

There was little discussion at the hearing or in the briefs concerning the agreement of the parties not to change the rates in Step 3 through 7 from the levels negotiated for the period from January 1, 1977 to December 31, 1977. Aides moving to Steps 4 and 5, of course, receive a fifty cent per hour increment and those moving into Steps 6 and 7 receive a twenty-five cent per hour increase. Slightly more than one-third (88 individuals) were at the top step in the spring of 1978, according to Union Exhibit #24, and were therefore not eligible for any pay increase. Eighty-one of these were regular aides and would not be eligible for a wage increase under either proposal. Judging by the comparable wage rates figures introduced by the Board at the hearing, the Union may have agreed that the Step 7 rate in Madison was substantially higher than other rates with which these aides' rates might be compared, and that therefore, aside from the proposed differential for SES aides, a case could be made only for increases in the starting rate and the second year rate.

On this issue the Board makes a strong case on grounds of comparability with other Wisconsin communities, as well as with data taken from a national survey of rates for school aides, that the aides in this unit are already treated better than aides in other school systems in the state, the region and the immediate vicinity. The Union in its turn indicated that there were differentials paid to "paraprofessional" and "special" aides in the Milwaukee Public School System, but no evidence was presented, other than the Union's assertion, that these classifications were similar to the SES classification involved here.

On this, therefore, the problem is posed for the arbitrator as to which of the factors in the statute should be applied. The choice lies between the "comparability" factor in Paragraph 7.d., quoted above, and "such other factors not confined to the foregoing" in Paragraph 7.h. The issue comes down to whether the evidence indicates that the SES aides are comparable to other aides in this community and in comparable communities or whether the nature of their work is distinctive and therefore justifies a differential. Although I am inclined to the latter view, it is not without some reservations. I would have preferred to have some evidence concerning how many and what proportion of SES aides are employed in the other communities in Wisconsin with which the Board made its comparisons. I would have preferred to know more about the differentials that exist among aides in the Milwaukee Public Schools. I would have preferred more detail concerning the data from the National Survey of Public Schools gathered

by Educational Research Services, Inc. and presented by the Board. Those data do not preclude the possibility that differentials for various categories of aides are subsumed in the average figures for "instructional" aides.

On the overall, however, it is my opinion that the Union makes a convincing case that because of special licensing, including a requirement of a combination of education and experience, because of the special responsibilities imposed upon them, as well as the onerous and unpleasant conditions of their work, the SES aides are entitled to a differential. I do not find the Board's argument very convincing that teachers in SES work also require licensing. This is the only licensing requirement for aides, whereas teachers have many different certification requirements. There is also a precedent for such a differential, although it was eliminated in 1972 before the collective bargaining unit came into existence. On the basis of evidence presented in Union exhibits, I do not believe it is accurate to argue, as the Board did in its brief (page 19), that the differential was eliminated in bargaining over the parties' first agreement, which became effective on January 1, 1975. In this respect the Board's brief was somewhat misleading. It implies (pages 10, 11, and 19) that the number of rates was reduced from two to one when the first agreement for this unit was negotiated. In actuality, however, the second rate listed in the Board's brief was for "lunchroom and/or playground supervisor," classifications that were excluded from the bargaining unit. It is not apparent, at least in the record presented to me in this proceeding, that the issue of differentials has been the subject of negotiations before this year. Nor do I believe that the Union's illustration concerning calculation of the differential in its pre-hearing brief constitutes less than a complete and final settlement of the issue. The amounts of the differentials would be from $.155 at Step 1 to $.25 at Step 7. In between, the calculations would in two cases have to be carried to four decimal places. And although the Board has argued that the Union proposal does not make clear which aides in special education programs would be entitled to the differential, testimony at the hearing made it clear that only licensed aides would be so entitled, and only when they were doing SES work.

In my opinion the difference between the cost of the Union proposal either on salaries alone or on the overall (which means deducting the Board's estimated $3,000 cost of long term disability insurance) is not enough to influence the decision in this case. In any event, the Union disputes the accuracy of the Board's cost estimates on grounds that if the Board's salary and duration proposals were accepted, there would be additional wage costs between January 1, 1979 and October 15, 1979. In addition, the Board estimates appear to assume no turnover at the end of the 1977-78 school year (transcript, page 99), a figure that could now be taken into account to get a more precise estimate if a question arises about conformance with national guidelines (although they had not been announced at the time of this proceeding).

Long Term Disability Insurance

This is a benefit that now exists in the collective bargaining agreements for all other units. It would provide a benefit of two-thirds of an eligible employee's monthly earnings subject to certain conditions. The Board estimates its annual cost at $3,000. The benefit is a useful one to employees and on the basis of comparability, other things being equal, I would favor awarding it.

Posting of Vacancies

The chief basis for the Union's proposed change is that under the old agreement, which provided that existing vacancies are posted "on or about the first day of each month," there is inadequate opportunity for members of the unit to bid for vacancies for the reason that most of them are filled by one means or another before those who may be interested ever hear about them. Thus, if the notices are required on a weekly basis with five days allowed before requests for transfer are due, there will be adequate opportunity for members of the unit to make a decision about whether to apply. Since another provision of the agreement requires a two week notice of resignation, I find the Union argument persuasive that there would be no unnecessary delay in filling the vacancies.

Since the Board has already agreed to post the notices on a weekly basis, this does not seem to me to be an onerous or impracticable proposal. Nor does it appear to me to onerous or expensive to mail notices of vacancies during the summer to those aides who have notified the Director of Employee Services of their desire to transfer. In general, I believe that it is equitable and fair and also a beneficial personnel practice for an employer to favor those already on the payroll when vacancies occur, assuming that no one is in the surplus pool. While this kind of procedure reduces the employer's flexibility in the short run, it may well increase the productivity of the work force in the longer run. I do not agree with the Board that there would be a problem in interpreting the terms "school day" in the first paragraph of the "Posting" section, "week days" in the second paragraph, and "days" in the third paragraph. It is generally understood that Saturdays and Sundays are excluded when such terminology is used.

Voluntary Transfer of Assignment

and

Reduction in Work Hours

Although the changes in the agreement proposed by the Union on the subject of reduction in work hours are comprehensive and substantial, they appear to me to be not unworkable or unreasonable. It is true, as the Board argues, that the word "substantial" is open to different interpretation, and it may well be that litigation will be required in some circumstances where the Board reduces hours. But changes of this sort ought not to be brought about without serious consideration of such consequences as well as a firm feeling on the part of the employer that they are necessary and that such action is taken for very good reason. I am not particularly impressed with the arguments of the Board that the criteria of "substantial decline in student enrollment or substantial change in the school program" do not recognize "such other factors as needs of students, financial support available for District programs as well as shifting student populations which may require varying levels of aide services." "Needs of students" ought to be encompassed in the term "substantial change in the school program" and "financial support available for District programs" is a description of a situation already covered by the "Reduction in Force" clause. In my opinion "shifting student populations" is covered by the term "substantial change in the school program." Also, at the hearing the Union stated (Transcript, page 55) that such concerns of the Board were covered by the Union's proposed standards.

While I agree with the Board that the Union did not need to depend in its presentation on the effects of reduction in hours on the preliminary indications of the 1975-76 school assignments,

the Union's illustrations were no less acceptable, in my opinion, than the hypothetical situations used by the Board to illustrate the effects of the Union's proposal in the event of reductions in work hours.

I agree that application of the Union's proposed procedures would reduce the Board's flexibility in making assignments of school aides and that there would be situations where the interests of the aides themselves may not be served, in the sense that some full-time aides will be reduced to part-timers unless they are willing to accept split assignments in different schools. But I believe that the principle of seniority in application of this policy is preferable to leaving the decisions on the effects of reduction in hours exclusively to the judgment of the employer. This may seem to be a harsh judgment. Seniority may not always produce the most efficient and best results from the standpoint of the employer. But I believe the effort should be in the direction of substitution of objective criteria for unilateral and possibly subjective decisions wherever that is possible in a collective bargaining relationship.

In its brief the Union notes that there is a typographical error in the last line of its final offer on "Voluntary Transfer of Assignment," where "Section IV-I(2)" is cited instead of Section IV-I(3)." In its reply brief the Board states that:

> The District objects to any alteration of the MTI offer.
>
> Footnote 19 on page 38 of the Union brief alleges that a typographical error was contained in the Union Final offer. Due to the gravity of the change effectuated by this alteration and the age of this impasse the District cannot consent to this alteration in the MTI offer.

Although I am puzzled by the failure of the Union to note the typographical error during the testimony at the hearing, I must deny the Board's objection in this case. It is very clear in the context that it is not paragraph 2 that contains the procedures referred to. Paragraph 4 under "F. Voluntary Transfer of Assignment" begins with the words: "In the event of a school being closed..." It seems clear to me that since Section IV-I(2) refers to a situation where "volunteers shall first be requested. . ." this could not have been the citation intended, and I therefore will accept the Union's explanation that Section IV-I(3) was intended.

Re-Employment

The Union argument about the results of the joint committee discussion of job descriptions and the lack of any very persuasive evidence from the Board to show that aides cannot perform in a variety of duties lead me to the conclusion that the phrase in question, "for their classes of positions," is dispensable. It is significant that both parties cite the same words in the third sentence of the paragraph in question to support their positions. That sentence and the words cited follow:

in such duties as typing and reading, there was no evidence introduced to show that there are distinct classifications of aides other than the distinction required by the licensing regulation for SES aides and the agreement the parties reached recently concerning "therapy assistants or interpreters."

Grievance Form

I am sympathetic with the Board's argument that grievances should not be filed on behalf of individual grievants without their knowledge. But although it appears that almost all grievances filed pursuant to the agreement between these parties have been filed at the third step as organizational grievances, it was not shown, other than by assertion of the Board, that grievants are not informed about such grievances. The precedent cases cited by the Union in its brief are persuasive on the issue of the obligation of the Union to file grievances on behalf of members of the unit where the alternative of not filing an individual grievance poses a threat to the collective rights of the members of the unit. The Union introduced several internal documents designed to show that where the Union filed organizational grievances, individuals who were affected were notified, and in fact were asked to sign an authorization form giving the Union authority to make settlements. While the existence of the forms is not proof that they are used, their introduction at the hearing is at least as impressive as the Board's assertion that a named employee member of the unit, who did not appear to testify in support of the Board's assertion, had complained that she had not been informed about a grievance filed on her behalf.

I am uncertain about whether inclusion of the proposed grievance form, with its provision at the bottom for the signature of the grievant, would preclude the filing of organizational grievances, as the Union argues. The Board argues that its stated disavowal of that intention both in the record at the hearing and in its brief are guarantees enough that the Union would not be foreclosed from filing grievances. In this sense the inclusion of the form along with the statement of the Board just described would seem to be enough assurance for the Union. Nevertheless, I do not think that the Union's doubts can be completely allayed for the reason that the sentence in Article II - Procedure - B3., from which the entire grievance procedure follows, reads as follows: "Grievances of aides will be considered and processed in the following manner: . . ." It is not inconceivable to me that this sentence could be interpreted to require the signature of an individual aide, an interpretation that could have a result like that of the Plum City case where the teachers' union was foreclosed from filing a grievance on behalf of two employees because of their refusal to file. That situation was described above.

If this were the only issue, I might be more inclined to award in favor of the Board for the reason that I agree that existence of the form would tend to provide assurance to employees that when grievances of a class or organizational nature were filed by the Union, they would at least seek the employee's signature so that the employee would be informed, even though it would not be a requirement that the employee sign the form. This is not the only issue, however, and I have enough doubts about how it would operate in the context in which it is proposed that I do not think that it should weigh heavily in the outcome of this dispute.

Duration

If, as I have indicated above, I am inclined to adopt the Union's final proposals, its proposal on duration raises only one doubt. That is the likelihood posed by the Board that three agreements involving instructional staff may expire at the same time, thus posing problems of bargaining for three units simultaneously and possibly preparing for three simultaneous mediation/arbitration proceedings in the autumn of 1979. As the Union indicates, however, this is speculative at this stage and I can hardly let that possibility govern the decision in this dispute.

On the other hand, an October 15, 1979 expiration of this proposed agreement is not unreasonable in terms of the adjustments that the parties would have to make in administering several new provisions. That period of time would allow them to learn whether further adjustments of the vacancy posting, transfer, and reduction in hours provisions would be desirable in light of experience during the period. One other consideration is that the Board's proposal on duration would mean that the parties would already be well beyond the time when negotiation of another agreement to replace a possible one year agreement for the year 1978 should have started.

General Comment

Aside from the wage differential, grievance form, and duration proposals, the issues in this dispute involving filling of vacancies, transfers, and reduction in hours are generally more complex than an arbitrator ought to be asked to decide. It is not that the matters are especially esoteric or abstruse in principle. The problem is that since the parties will have to administer the new wording, it would have been better for them to agree upon the words at the time they are made effective. I do not know (and indeed the parties cannot know) what special difficulties will be encountered with these new policies and procedures. I am impressed, however, with the fact that two-thirds of the school aides in this unit were in the fourth step or beyond in the spring of 1978 and one-third were in the top step. In almost all cases that means that the incumbents of these positions have in the current school year an equivalent number of years of experience as school aides. This indicates that these are not casual employees and that there is a long-term commitment to this work on the part of the employees. That being the case, I believe that the increased sharing of the decision-making authority in filling vacancies, making transfers, and reducing hours based on seniority and increased opportunity for individual choice is a desirable development in this collective bargaining relationship, even though I recognize that the new clauses will add administrative difficulties for the Board. Although the award is based largely on the factor designated in the statute as Paragraph 7 h., "such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. . ." etc., there is also a basis in the transfer, posting of vacancies, and reduction in hours provisions in the comparison factor, Paragraph 7 d., in the sense that most of the Union's proposed policies and procedures already exist in agreements covering other Board employees.

I make the award after having experienced some anguish over almost every issue. In terms of the constraints imposed upon me by the "either-or" requirement of the statute, I believe that it is the correct decision.

The Board argues in its brief that the Union final offer on three issues is vague and ambiguous and therefore defective and

must be rejected. On the issue of Voluntary Transfer of Assignment the Board objects to any alteration of what the Union said in its brief was a typographical error in referring to Section IV-I(2) when Section IV-I(3) was intended. These arguments and objections are specifically rejected by this award.

AWARD

The final offer of the Union is adopted as the award in this proceeding.

Dated: November 28, 1978
in Madison, Wisconsin

Signed: David B. Johnson
David B. Johnson
Mediator/Arbitrator

ADDENDUM A

Name of Case: MADISON METRO SCHOOL DIST. LXXVIII No 22903 MED ARB 87

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

5/5/78 (Date) _____ (Representative)

On Behalf of: Madison Teachers Inc. a: United School Aides - MTI

121 S. Hancock
Madison, Wisconsin 53703
(608) 257-0491
John A. Matthews, Executive Director

Madison Teachers Inc.

May 5, 1978

Robert McCormick
Wisconsin Employment Relations Commission
Room 910
30 W. Mifflin
Madison, WI 53703

LXXVIII No. 22903 MED/ARB 87

RE: Case LXXV No. 22424MM-2113

Dear Mr. McCormick:

Attached hereto please find MTI's final offer in the above noted case, as amended following the investigation hearing conducted this date. It is our understanding that the successor agreement will remain as it was for the prior agreement, except for the revisions stipulated upon this date and any revisions agreed upon or awarded hereafter.

Very truly yours,

John A. Matthews
Executive Director

cc: Maurice Sullivan

JAM:do

MADISON TEACHERS INCORPORATED
121 S. Hancock
Madison, Wisconsin 53703

MTI-USA
Mediation

050578

FINAL OFFER
As Submitted
To Wisconsin
Employment
Relations
Commission
Case LXXV No. 22424MM-2113

A. Proposals (See Attached)

MTI 3 (2 b only)	Conference and Negotiation Procedure
MTI 4	Salary
MTI 12	Posting of Vacancies
MTI 13	Assignment/Involuntary Transfer
MTI 14	Voluntary Transfer of Assignment
MTI 15A	Reduction in Work Hours
MTI 16	Re-employment
MTI 26	Holidays
MTI 30	Health Insurance
~~MTI 31~~	~~Group Life Insurance~~
MTI 38	Duration

II - Procedure - A

A. CONFERENCE AND NEGOTIATION

*1. This agreement effective upon execution between the BOARD OF EDUCATION OF THE ~~City of Madison, being the Board of Education for Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg, Westport,~~ and Burke MADISON METROPOLITAN SCHOOL DISTRICT hereinafter referred to as the "Board of Education," and also referred to as the "Employer", or "Madison Public Schools", or the "District"; and MADISON TEACHERS INCORPORATED, hereinafter referred to as "Madison Teachers", and also referred to as "MTI", or "the Union".

2. The Board of Education and Madison Teachers each recognize its legal obligation imposed by Section 111.70 of the Wisconsin Statutes to meet for the purposes of negotiating in good faith at reasonable times in a bona fide effort to arrive at a settlement on questions of wages, hours and conditions of employment. Without limiting this legal obligation, the parties to this agreement agree as follows:

a. All terms initially proposed to be negotiated for the contract year commencing October 16, 1979 shal be submitted to the duly authorized agent of the other party in writing and according to the timetable set forth in this agreement. Negotiations shall be conducted on an annual basis unless otherwise mutually agreed upon. The limitation of initially proposed items for negotiation to those in written form and in accordance with the attached timetable shall not prevent the unilateral introduction of new items by either party from time to time during the period of negotiations.

b. Timetable - All items initially proposed for negotiations shall be presented as follows:

1. Presentation of initial proposal to be made on or about ninety (90) days prior to the expiration of this agreement. ~~of the previous year.~~

2. Mutual Arrangement for first meeting to consider initial proposals to be held on or about ninety (90) days prior to the expiration of this agreement. ~~of the previous year.~~

3. Ideally, agreement by the agents should be ready by fifteen (15) days prior to the expiration of this agreement, ~~of the previous year,~~ for ratification by the principal parties.

c. Each party to this agreement desiring to be represented by agents for negotiating agrees to furnish to the other party a list of its duly authorized agents for such purposes. Each party agrees to negotiate only with said agents and no others, including their principals, namely, the Board of Education or Madison Teachers,

as the case may be, unless the latter as principals authorize negotiations with others or themselves.

d. If matters which are proper subjects of negotiations are brought, whether in the form of grievance, petition or otherwise, to the attention of either of the parties to this agreement by any individual, group of individuals or organization other than the other party to this agreement or its duly authorized agents, such latter party shall be punctually informed of such action.

e. Each party to this agreement, at its own expense, may utilize the service of legal counsel, professional negotiators and other such expert persons, as well as clerical assistants, at negotiations.

f. Meetings for negotiating shall be held at mutually acceptable times and places and shall be open to the public. Meetings, caucuses, or executive sessions of the authorized agents of either or both parties shall be closed to the public.

g. When agreement is reached, it shall be reduced to writing and when approved by Madison Teachers and the Board of Education, it shall be signed by duly authorized representatives.

h. If after a reasonable period of negotiations the parties to this agreement are deadlocked in the opinion of either or both of the parties, such party(ies) may call upon the Wisconsin Employment Relations Commission for assistance as provided pursuant to Section 111.70 of the Wisconsin Statutes.

*Section 1 was agreed to December 5, 1977.

III - Salary - A

A. SALARY

~~1.--The-salary-as-shown-in-Schedule-A-shall-be-the-minimum-wage-for-the position(s)-Shown-and-shall-be-attached-hereto-and-made-a-part-thereof for-the-life-of-this-Agreement.~~

1. The salary rate shown below shall be the hourly wage for school aides during the life of this agreement.

Step 1	$3.10	Step 6	$ 4.75
Step 2	$3.35	Step 7	$5.00
Step 3	$3.50		
Step 4	$4.00		
Step 5	$4.50		

Aides employed in special education programs shall be paid an additional 5% of the rates noted above.

2. A new school aide is initially placed at the first school year rate (Step 1) and advances annually to the second, third, fourth, ~~and~~ fifth, sixth, etc. school year rates; however, school aides beginning their second school year of employment must have completed their probation in order to be eligible for the second school year rate. All rates of pay are determined on or about October 1 and February 1 to be effective the first day of the current semester.

3. School aides are paid on an hourly basis for any and all work assigned and performed. Such pay shall be at the established hourly rates.

D. POSTING OF VACANCIES

1. Existing aide vacancies are posted in each school office and staff lounge ~~on or about the first day~~ the last school day of each ~~month~~ week. An updated list of aide vacancies may be examined at any time in the Office of Employee Services.

2. Vacancy notices shall be listed/posted for five (5) week days prior to the date requests for transfer are due. The notice shall contain the date transfer requests are due.

3. Notice of vacancies occuring during the summer shall be sent, by the Director of Employee Services, to all individuals in the collective bargaining unit who have previously notified the Director of Employee Services in writing of their desire to transfer for the ensuing school year, except when the surplus pool includes any aide qualified for such position(s). Such notices shall be mailed five (5) days prior to the date requests for such transfers are due.

4. Should a job become vacant which the Employer does not intend to fill, the Employer shall notify the Union that the position is being eliminated or of the estimated period of time that the position will remain unfilled.

E. ASSIGNMENT/INVOLUNTARY TRANSFER

1. An aide, upon beginning employment in the Madison ~~Public Schools~~ Metropolitan School District, is given a preliminary notification of building and/or position assignment.

2. Continuing aides shall receive notice of the probable number of hours of their assignment and location prior to the close of the preceding school year.

3. Involuntary transfers of school aides may be made by the Superintendent of Schools. Such transfers shall not be for arbitrary and capricious reasons.

F. VOLUNTARY TRANSFER OF ASSIGNMENT

1. A school aide wishing to transfer should apply to the principal of the building in which the vacancy exists. Upon request of said principal such transfer shall be made so long as the surplus pool does not include any aide qualified for the same position for which the above-mentioned aide has applied.

2. The aide shall then file a statement with the Director of Employee Services requesting such transfer. The Director will then review the statement and upon receipt of a principal's request will process the transfer. This will occur so long as the instructional requirements of the schools are not disrupted. Denial of the transfer may be for just cause. The Director of Employee Services will notify the aide of his decision.

~~Existing aide vacancies are posted in each school office on or about the first day of each month; an updated list of vacancies may be examined at any time in the office of the Division of Employee Services.~~

~~A list of vacancies for the following year shall be published by the Director of Employee Services and sent to each school for posting and also be published in the February and May publication of Staff News.~~

3. All factors being equal, school aides should be given preference for positions for which they have applied.

4. In the event of a school being closed, school aides displaced will be given a list of vacancies and shall indicate at least three preferences. ~~Insofar as possible, the~~ such aides will be assigned according to ~~these preferences.~~ procedures as outlined in Section IV-I(2).

IV - Factors Relating to Employment - I

I. REDUCTION IN WORK HOURS

~~Should it become necessary to reduce the hours of aides assigned to a given school, the reduction shall occur as follows:~~

~~1. The hours of those aides employed less than 19 hours shall be first reduced. If such action would cause the principal the inability to assign the remaining staff at the time their service is needed with the school program or such revision would cause insufficient reduction in hours then:~~

~~a. The hours of those aides employed more than 19 hours will be next considered. Such reduction shall not result in hours being reduced to less than 19.~~

~~b. If the above does not reduce the hours necessary, individually or collectively, then such reduction shall be by seniority.~~

~~2. Prior to any action being taken as described in this section, the Director of Employee Services shall certify to the Executive Director of Madison Teachers that it is necessary to make such a reduction and the reasons therefore. Should such allocation be reinstated the Director of Employee Services shall notify the Executive Director of Madison Teachers prior to the vacancy being filled.~~

1. Should it become necessary to reduce the hours of aides assigned to a given school due to a substantial decline in student enrollment or substantial change in the school program, such reduction shall occur as follows:

   a. The hours of those aides employed less than 19 hours per week shall be first reduced in the inverse order of seniority as defined in Section IV-G.

   b. If the principal cannot reduce the necessary number of hours per "A" above, the principal may next reduce the hours of those aides employed 19 hours or more per week. Such reduction shall be by seniority in accordance with their seniority as set forth in Section IV-G. In any event, such reductions shall not result in an aide, as defined in this subparagraph, being reduced to less than 19 hours per week. Reductions in hours must be made by July 1 for the ensuing school year or the fall semester of the ensuing school year and by December 1 for the spring semester of the school year.

   c. Any school aide who has had his/her hours reduced per the above, shall be provided written notice of same by the date set forth above. Such notice shall also be sent, on a timely basis, to the Executive Director of Madison Teachers Incorporated with the reason for such reduction by the Director of Employee Services.

d. Prior to any action being taken as described above, the Director of Employee Services shall certify to the Executive Director of Madison Teachers that it is necessary to make such a reduction and the reasons therefore.

2. When it becomes necessary to reduce hours or to declare aide(s) surplus, volunteers shall first be requested. If no volunteers are available or if there is an insufficient number of volunteers, then the principal shall declare aide(s) to be Surplus Aides in the manner as set forth above. Should a person volunteering to be surplus result in the remaining aides being unqualified to perform the remaining assignments, the principal shall not be bound to accept the volunteer as surplus.

3. Assignment to and Re-assignment from the Surplus Pool

Aides who have had all or part of their hours reduced at a given school per the above shall be placed in the school aide surplus pool. Said aides shall be appropriately placed on either the full-time re-assignment list or the part-time re-assignment list according to their seniority as defined in Section IV-G. Said aides shall then be re-assigned pursuant to their preference among vacant positions for which they are qualified and/or certificated. Preference for said re-assignment shall be based upon seniority among those aides on either the part-time or full-time seniority list. Should there be two aides, one full-time and the other part-time, in the surplus pool who have the same seniority, the full-time aide will be re-assigned first. Full-time aides shall be re-assigned in such a manner so as to maintain their full-time status. Should an aide have no preferences among the available vacancies, said aide shall be re-assigned to any position for which he/she is qualified and/or certificated. However, the District shall make every reasonable effort to re-assign aides to positions of at least the same number of hours they currently work. Additional allocation or restored allocation in aide hours shall be first offered to aides then currently employed at the school/work location where such allocation becomes available. Additional hours will be offered to school aides on the basis of seniority as defined in Section IV-G, before additional aides are hired to perform the available work.

N. RE-EMPLOYMENT

1. DUE TO LAYOFF
Employees on layoff shall be placed on re-employment lists. ~~for their classes of positions.~~ Eligibility for retention on the re-employment lists shall extend to a maximum of one (1) year from the effective date of separation. Employees on the re-employment lists shall be given preference in the order of their seniority over all new applicants for all positions for which they can qualify. Aides re-employed shall return to the same level in the salary range they had attained when they were laid off ~~up to and including five (5) years,~~ and shall receive full credit for all prior service, but shall not receive credit for the time for which they were separated except as otherwise provided.

2. DUE TO RESIGNATION
Aides re-employed shall return to the same step in the salary range they had attained at the time of resignation, and shall receive full credit for all prior service ~~up to and including five (5) years,~~ but shall not receive credit for the time during which they were separated.

3. Any rehiring would be first offered to those released via "Reduction of Staff" or "Layoff" if such individuals wish employment. Such individuals shall be offered re-employment once.

4. RETIRED AIDES
A school aide, who has retired at the age of 65 and who is temporarily re-employed on an emergency basis, will be compensated at his/her salary step on the salary schedule at the time of their retirement.

I. HOLIDAYS

~~School aides employed 19 hours or more per week shall be compensated for one holiday of their choice during the calendar year 1975.~~

~~School aides employed 19 hours or more shall be compensated for one holiday of their choice during the calendar year 1976.~~

~~School aides shall be compensated for three holidays in 1977. These three holidays shall be specified in the official school calendar contained in the Collective Bargaining Agreement between the Madison Public Schools and Madison Teachers Incorporated.~~

School aides shall be compensated for the following holidays:

Labor Day

Thanksgiving Day

Memorial Day

B. HEALTH INSURANCE

1. Coverage shall be optional and shall be the Dane County Health Maintenance Program (HMP) or conventional insurance coverage, which is currently in effect for those electing such coverage other than HMP.

2. Participation in the program is optional.

3. Premium payments are made by payroll deduction.

4. a. The Board of Education will pay a premium up to a maximum of $32.00 monthly for single person coverage. ~~Effective 1/1/76 this will be increased to $25.00.~~

   b. The Board of Education will pay a maximum of $80.00 monthly for family coverage. ~~Effective 1/1/76 this will be increased to $50.00.~~

   c. It is understood that any changes in benefits of this announced program requiring premium increases or any premium increases for the same program required in the future will not increase the individual or family contribution by the Board of Education.

~~5. The staff of Madison Teachers Incorporated shall be included in the group hospital and surgical insurance upon payment of the premiums by Madison Teachers Incorporated.~~

~~5. Health insurance will be reopened for negotiation should the school aides be included in the teacher group with Wisconsin Physicians Service, i.e., impact of savings may be used to adjust salaries of aides.~~

5. Effective January 1, 1979 school aides shall be included in WPS Group 1202.

6. Effective January 1, 1979, The Board shall offer the aides the option of membership in a qualified health maintenance organization which is engaged in the provision of basic and supplemental health services in the areas in which the aide resides, all in accordance with P.L. 93-222 and such regulations as the Secretary of Labor shall prescribe thereunder. The Board shall pay the premiums up to the amount paid for the regular group hospital and surgical insurance but shall not be required to pay any more to such health maintenance organization than it is required to pay under provision VII-B(4).

H-G. DURATION

The provisions of this Agreement will be effective as of the 5th day of May, ~~1975~~ 1978 and shall continue and remain in full force and effect as binding on the parties hereto through the 15th day of October ~~1977~~ 1979, except where herein noted.

ADDENDUM B

Name of Case: Madison Metropolitan School District
Case LXXV No. MED/ARB-87

The following, or the attachment hereto, constitutes our final offer for the purposes of mediation-arbitration pursuant to Section 111.70(4)(cm)6. of the Municipal Employment Relations Act. A copy of such final offer has been submitted to the other party involved in this proceeding, and the undersigned has received a copy of the final offer of the other party. Each page of the attachment hereto has been initialed by me.

5-5-88
(Date)

(Representative)

On Behalf of: Madison Metropolitan School District

BOE

FINAL OFFER

5-5-78
School Aides

Contract - 1-1-78 thru 12-31-78

Retroactive to 1-1-78

Salary Schedule to be modified to

Step 1	$3.20
Step 2	3.35
Step 3	3.50
Step 4	4.00
Step 5	4.50
Step 6	4.75
Step 7	5.00

Health insurance -

Single coverage - BOE will pay a maximum of $32 monthly

Family coverage - BOE will pay a maximum of $80 monthly

Effective 1-1-79 school aides shall be included in WPS Policy Group 1202

Delete #6 Section VII B

Holidays -

School aides shall be compensated for the following holidays in 1978:

Labor Day
Thanksgiving Day
Memorial Day

Grievance Form -

The attached grievance form shall be used to process grievances.

Long Term Disability -

1. The Madison Metropolitan School District shall provide to employees employed half-time or more, at no cost to the employee, long term disability income protection insurance.

2. The amount of plan benefit is 66-2/3% of the eligible employee's monthly earnings at the start of disability subject to a monthly plan benefit of $1,000. The monthly benefit may be reduced by benefits received from Worker's Compensation, Social Security, Wisconsin Retirement Fund, or any income protection plan offered by the Board of Education, and any salary or wages received from the Board of Education.

3. So long as an employee is eligible to receive benefits under this LTD program, such benefits are payable to age 65 for both sickness and accident.

UNITED SCHOOL AIDES - MADISON TEACHERS, INC.

No._____

Complaint and Grievance No. Date

Employee's Supervisor Work Location

Employee's Name Hiring Date

Date of the alleged infraction

Statement of Grievance:
(Circumstances of Facts): (Briefly, what happened)

(The contention - what did management do wrong?) (Article or Section of contract which was violated, if any.)

(The request for Settlement or corrective action desired):

(Signed) _____
Aggrieved Worker